

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

FAIRVIEW LAKES HEALTH SERVICES

Employer

and

SERVICE EMPLOYEES INTERNATIONAL UNION
(SEIU) HEALTHCARE MINNESOTA

Petitioner

Case 18-RC-17674

DECISION AND DIRECTION OF ELECTION

As described in more detail below, the Employer consists of a hospital located in Wyoming, Minnesota; a number of clinics that are physically attached to the hospital; and additional, satellite clinics located outside of Wyoming. As amended at the hearing, Petitioner seeks a unit consisting of all full-time and regular part-time technical employees employed at the Wyoming and satellite clinics. Included in this unit are licensed practical nurses (LPNs), certified medical assistants (CMAs), laboratory technicians, radiology technicians, and any other technical employees employed in the clinics; excluding all other employees, professional employees, managerial employees, guards and supervisors as defined in the Act, as amended. Thus, Petitioner seeks to exclude from the unit LPNs, CMAs and other technical employees employed at the hospital.

The Employer contends that the only appropriate unit must include all of its technical employees employed at the Wyoming hospital, the Wyoming clinics and the

satellite clinics. Among the hospital employee classifications encompassed by the Employer's unit are laboratory and radiology technicians not employed in the satellite clinics, hospital floor LPN, dietetic technician, surgical technician, cardiopulmonary specialist, respiratory care practitioner (regular and casual), compliance and reimbursement coder, echocardiology technician, cardiology holterscan technician, pharmacy distribution specialist, pharmacy technician, coord CPAP/Bi-Pap, senior and regular polysomnographic tech, EEG tech, physical therapy assistant (regular and casual), massage therapist, lab diagnostic technician, breast imaging and interventional breast procedures, lead ultrasound technologist, casual rad tech, spec pro tech – NC, lead rad tech – CT, lead mammo tech – FLR, lead rad tech gen, ultrasound technologist, radiologic technologist, CT and MRI technologist.

Based on the record and relevant Board law, I find that the unit sought by Petitioner is not an appropriate unit, and that the only appropriate unit is the unit sought by the Employer.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

¹ The Employer, Fairview Lakes Health Services, is a Minnesota corporation engaged in the operation of providing health care out of its facility located at Wyoming, Minnesota and its facilities located at Wyoming, Chisago City, Hugo, Lino Lakes, North Branch, Pine City and Rush City, Minnesota. During the past 12 months, a representative period, the Employer derived gross revenues in excess of

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Before explaining my conclusion that a system-wide technical unit is the only appropriate unit in this proceeding, this decision summarizes the facts revealed by the record. The facts are organized in several sections. First is an overview of the Employer's operation. The second section contains a summary of the Employer's organizational structure and supervisory hierarchy. Next is a description of the clinic licensed practical nurses and certified medical assistants, including their relationship to the Employer's hospital licensed practical nurses. The fourth section is a detailed description of the Employer's diagnostic imaging department employees, followed by a section describing in detail the operation of the laboratory. Sixth, I describe in less detail the classifications of technical employees employed by the Employer who are not employed in the diagnostic imaging department or in the laboratory, although this section contains a detailed description of the Employer's sleep center. The seventh section summarizes record evidence on the pay, benefits and working conditions of the certified medical assistants, licensed practical nurses, and other technical employees in the Employer's employ. The final two sections summarize Board law and then explain my conclusion that the unit sought by Petitioner is inappropriate and that the only

\$1,000,000 from its operation and, during the same period, received at its Minnesota facilities goods shipped directly from suppliers located outside the State of Minnesota valued in excess of \$50,000.

appropriate unit is a system-wide unit of licensed practical nurses, certified medical assistants and other technical employees.

OVERVIEW OF THE EMPLOYER'S OPERATION

Fairview Health Services is a health care system divided into seven regional care systems. Each regional care system consists of a hospital and medical clinics affiliated with the hospital. While not every regional care system is described in the record, based on the ones that are described, it appears that each regional system is based on a geographical area. Thus, each hospital and its affiliated clinics are geographically proximate to one another.

The Employer is one of the seven regional care systems. Its hospital is in Wyoming, Minnesota. The hospital and its affiliated clinics (described in more detail later herein) serve patients located northeast of the Minneapolis/St. Paul metropolitan area. According to the Employer's website (printouts of which are part of the record), the Employer's medical center "is the hub of a seamless system of care from routine diagnostics to specialty medicine—and every point in between. Primary care physicians from our community clinics work closely with specialists at Fairview Lakes Medical Center to make all of these services available close to home." The Employer has a total of 1,300 employees. Of the 1,300 employees, about 375 are employees represented by Petitioner in a region-wide unit consisting of service, business office clerical and clerical employees employed by the Employer at its clinics and hospital. Another 250 employees are represented by the Minnesota Nurses Association in a region-wide unit of registered nurses employed by the Employer at its clinics and hospital.

The Employer's hospital consists of 66 beds. In the same building as the hospital are six clinics. They are the family medicine clinic, pediatrics clinic, OB/GYN clinic, internal medicine clinic, Fairview Sports and Orthopedic Care (FSOC) Clinic, and surgical specialty clinic. The FSOC Clinic shares space with the St. Croix Ortho and Specialty Clinic. An allergy clinic is located within the family medicine clinic. A seventh clinic, the oncology clinic, is in a medical office building physically connected to the Employer's Wyoming facility by a skyway.²

The clinics located at the Wyoming, Minnesota facility are physically separated from the hospital. The clinics are located in the front of the building, and the hospital in the back of the building. There is a separate entrance for the clinic area as compared to the hospital. As a patient enters the clinic area, the patient proceeds down a hallway with the various clinics aligned along the hallway, like retail stores in a shopping mall. Each clinic has its own waiting area and check-in desk used by patients. For purposes of this decision, the clinics located adjacent to the hospital will be referred to as the Wyoming clinics.

In addition to the Wyoming clinics, there are six satellite clinics. The satellite clinics are akin to the family medicine clinic in Wyoming. Thus, at these clinics wellness exams, sick calls and injury exams occur. In addition, satellite clinics provide some specialty care—specifically in OB/GYN and podiatry. The satellite clinics are located in Chisago City, Hugo, Lino Lakes, North Branch, Pine City and Rush City, all located in

² In its brief Petitioner states that it seeks to represent employees employed in the family medicine, pediatric, OB/GYN, internal medicine, surgery specialty, oncology and allergy clinics. However, the record does not establish that the allergy practice constitutes a separate clinic. Petitioner further maintains that there is not a separate orthopedic clinic, but instead that there is an orthopedic "room." According to Petitioner, because the orthopedic practice is not a clinic, it does not seek to represent employees employed in the orthopedic area.

the State of Minnesota. While not in the record, I note the following distances between the towns where the Employer has locations (according to MapQuest): Wyoming to Chisago City – about 7 miles; Wyoming to Hugo – about 13 miles; Wyoming to Lino Lakes – about 15 miles; Wyoming to North Branch – about 13 miles; Wyoming to Pine City – about 35 miles; and from Wyoming to Rush City – about 25 miles.

ORGANIZATIONAL STRUCTURE AND SUPERVISORY HIERARCHY

Fairview Health Services has two vice presidents of clinic operations for its northern region. The relevant vice president for the Employer's operation is Steve Endrud, acting in an interim capacity. Endrud has seven direct reports, four of whom are connected with the Employer's clinic operation. The four are Deb Hollerich, responsible for the Hugo, Lino Lakes and Blaine clinics (the Blaine clinic is, of course, not included in the Employer's operations); Mindy Lines, responsible for Chisago City and Wyoming primary care; Wendy Young, responsible for the Wyoming specialty clinic, the Wyoming OB/GYN clinic, the Wyoming oncology clinic and the Wyoming internal medicine clinic, and the sleep clinic; and Sue Baker (interim), responsible for North Branch, Rush City and Pine City. Of the four, Mindy Lines testified at the hearing in this matter.

Mindy Lines' job title is Clinic Administrator II. She oversees the daily operations of the clinics she manages. Lines manages the Wyoming family medicine clinic, the Wyoming pediatrics clinic and the Chisago City clinic. While not explicitly stated, presumably Hollerich, Young and Baker have similar roles for their assigned clinics. Lines' office is at the Wyoming, Minnesota facility.

Also in evidence is the Employer's laboratory organization chart. The Employer's laboratory director is Cheryl Huuki, who also testified at the hearing. Huuki reports to the Employer's vice president of ambulatory operations, currently a vacant position. It is unclear where the vice president of ambulatory operations fits in relation to the vice presidents of clinic operations. Reporting to Huuki are Technical Supervisors Lori Ralph and Helen Brenny.

Each satellite clinic and each Wyoming clinic has an administrator who is responsible for the operation of the clinic.

CLINIC LPNs AND CMAs AND THEIR RELATIONSHIP TO HOSPITAL LPNs

LPNs and CMAs employed in the Employer's clinics are interchangeable; that is, both classifications perform the exact same duties. Those duties are to provide support for physicians and providers for patient care. These duties include escorting patients to exam rooms, taking vital signs, drawing blood, and assisting examining physicians and providers.

In performing their jobs, clinic LPNs and CMAs complete pre-rooming worksheets. This worksheet is done in preparation for a patient visit by looking at the schedule of patients, pulling up the patients' information, and then filling out the worksheet based on the records. This worksheet assists in determining what tests to run, what immunizations are necessary, and what long-term medications or therapies patients may be on. Hospital LPNs do not fill out a similar worksheet.

On any given day there are 20 to 25 CMAs and LPNs employed at the Wyoming clinics, and 15 to 20 CMAs and LPNs employed at the satellite clinics. There is also a group of 7 CMAs who are called the flexible work force (FWF). These 7 CMAs work at

whatever clinics need them, including both the satellite and Wyoming clinics. A total of 77 CMAs and 10 LPNs work in the clinics supporting the physicians and providers (obviously, the number of CMAs and LPNs employed in the clinics on a daily basis does not add up to 77; this is because some are employed part time).

Clinic LPNs and CMAs report to the clinic administrators, and are never supervised by hospital personnel. While not explicitly stated on the record, the 11 hospital LPNs report to different supervisors and a chain of supervisory authority. Clinic LPNs and CMAs have their own weekly work schedules that cover all clinics, and the schedules do not cover any other employees. The record is clear that some clinic LPNs and CMAs are regularly scheduled at more than one clinic; that clinic LPNs and CMAs regularly fill in at clinics to which they are not permanently assigned; and that clinic LPNs and CMAs permanently transfer among the clinics. Thus, there is evidence of substantial and regular temporary and permanent movement among the various clinics by clinic LPNs and clinic CMAs.

On the other hand, clinic LPNs and CMAs never work in the hospital, and hospital LPNs and CMAs never work in the clinics. Moreover, clinic LPNs and CMAs do not appear to have access to the hospital by using their employee badges during evening hours. On occasion, a Wyoming clinic LPN or CMA might assist in transporting a Wyoming clinic patient to the hospital, but this event does not appear to happen with any regularity. Wyoming clinic LPNs and CMAs do not follow the clinic physicians to the hospital to work alongside them, and appear to have little work-related reason for being in patient-care areas of the hospital. Similarly, there is no evidence that hospital LPNs have work-related reasons to be in the Wyoming clinics.

The Wyoming and satellite clinics operate days Monday through Friday, with some operating extended hours on Monday evening and/or half days on Saturday. On the other hand, the hospital operates seven days a week, 24 hours a day. Thus, clinic LPNs and CMAs do not work most evenings and never work Saturdays or Sundays (except some work Saturday mornings).

With one exception, no LPNs or CMAs work in both the clinics and the hospital. The exception is a CMA employed .2 (two days in a 2-week pay period) at the Wyoming family medicine clinic, who then works additional hours at the urgent care clinic (Petitioner is not seeking the CMAs or LPNs employed at the urgent care clinic).

DIAGNOSTIC IMAGING DEPARTMENT EMPLOYEES

The record contains a great deal of evidence about the Employer's diagnostic imaging department, which encompasses both the hospital and all clinics. This department conducts x-rays, mammography, CT scans, MRIs and ultrasound tests. According to the Employer, there are 61 employees in the diagnostic imaging department. The Employer conducts about 6,000 imaging procedures a month. Twenty percent of the 6,000 procedures originate from the satellite clinics; another 20 percent originate from the Wyoming clinics; 40 percent are from the hospital and urgent care; and about 20 percent are for non-system providers, and done on a contract basis.

While most of the 61 employees in the diagnostic imaging department are located in Wyoming in a department separate from the Wyoming clinics, a few are located in the satellite clinics. For example, Pine City has one full-time clinic x-ray technologist, who performs chest, abdomen and bone x-rays. When the Pine City clinic x-ray technologist, who works Monday through Friday, 8:30 a.m. to 5:00 p.m., is unable

to work, a radiologic technologist from the Wyoming diagnostic imaging department covers the position. Rush City has two radiologic technologists; each works halftime to cover Monday through Friday hours of the Rush City clinic. They are radiologic technologists because they are qualified to perform x-rays and mammography (the Pine City employee is not qualified for mammography). Other employees of the diagnostic imaging department float to Rush City a total of 7 to 11 times per year. Most of the floats normally work in the diagnostic imaging department in Wyoming, although two float from Chisago City. In Chisago City are two radiologic technologists: one works .6 and the other .4 (equaling one full-time equivalent). They cover Monday through Friday, eight hours a day, at Chisago City. In addition to occasionally floating to Rush City, the two radiologic technologists employed at Chisago City together float to the diagnostic imaging department in Wyoming 26 to 30 times per year. Conversely, four employees in the diagnostic imaging department float to Chisago City 8 to 10 times per year. The North Branch clinic has one full-time clinic x-ray technologist. Wyoming employees in the diagnostic imaging department fill in for the North Branch employee 12 to 14 times per year. The Hugo and Lino Lakes clinics each have one full-time clinic x-ray technologist working Monday through Friday. Wyoming employees employed in the diagnostic imaging department float to Hugo 9 to 13 times per year and to Lino Lakes 9 to 15 times per year.

Thus, the satellite clinics employ 8 of the 61 employees in the diagnostic imaging department (6 full-time equivalencies). In addition, the Wyoming orthopedic clinic or room employs 2-3 diagnostic imaging employees who collectively work one full-time equivalent. Petitioner seeks to include the 8 satellite clinic diagnostic imaging

employees—but not the remaining diagnostic imaging employees employed in Wyoming who are not associated with a clinic, and not the diagnostic imaging employees assigned to work one full time equivalency in the orthopedic area.

Whether employed at the satellite clinics or in the Wyoming diagnostic imaging department, the employees perform imaging modalities consistent with their qualifications. Of course, as a result, certain tests are conducted only at the Wyoming site, including CTs, MRIs and ultrasounds. In the event a clinic patient needs an imaging test that is conducted only at Wyoming, the patient must make a separate appointment. If the imaging test can be conducted at the satellite clinic, the test can be conducted at the time of the patient's original visit.

Employees employed at the Wyoming diagnostic imaging department perform all imaging for the Wyoming clinics, except that three individuals (one full-time equivalency) are assigned to the orthopedic clinic, and work in that location. Diagnostic imaging employees also perform imaging for hospital patients. For example, real-time imaging is used 210 times per month for surgery. Imaging is also used in the pain clinic (not sought by Petitioner) for needle placement in the spine for steroid injections. This work in the pain clinic is performed by one of the Chisago City radiologic technologists every other Saturday. The pain clinic is in the same area as same-day surgery and considered part of the hospital.

Debra George supervises the diagnostic imaging department. There are two supervisors beneath George; certain technologists report to them, and others directly to George. None reports to the satellite clinic administrators. Either George or one of the other supervisors disciplines department employees, including the satellite clinic

employees. A staffing clerk staffs all modalities and therefore schedules all hours of work for the diagnostic imaging department, whether the employees are in Wyoming or the satellite clinics. The staffing clerk also processes time-off requests. George's email list includes all department staff, and the same manual is used by all of the department staff. The satellite clinic technologists regularly consult with the Wyoming technologists in performing their jobs.

OPERATION OF THE LABORATORY

The Wyoming facility has two laboratories that are considered one department. The main laboratory is located on the second floor, in the same area as the OB/GYN and pediatric clinics, and an outpatient laboratory is on the first floor. The outpatient laboratory is open Monday through Friday during the day, with extended hours Monday evening and for a half day on Saturday. The director of laboratory operations is Cheryl Huuki.

The laboratory department employs 16 clinical lab technicians (CLTs) and 4 lab diagnostic techs (LDTs), all employed in the main or outpatient laboratories in Wyoming. These employees draw blood, run lab tests, and perform instrumentation maintenance. More complex testing is limited to the second-floor laboratory—and not performed in the outpatient laboratory. In addition, the department employs lab care techs, who are in the service employee bargaining unit, who perform mainly venipunctures. The lab care techs are therefore basically phlebotomists. The lab care techs work throughout the Wyoming building, collecting blood samples from patients in clinics, as well as throughout the hospital.

In addition to the 16 CLTs and 4 LDTs employed in the Wyoming labs, CLTs and LDTs are employed at the satellite clinics. One is scheduled for each of the clinics in Pine City, Hugo and Rush City; and two are scheduled for each of the clinics in Chisago City, North Branch and Lino Lakes. Thus, there are nine lab technical employees employed at the satellite clinics each day. While Petitioner's unit would include the laboratory technical employees employed at the clinics, Petitioner seeks to exclude the laboratory department employees employed in Wyoming—whether they work in the outpatient or main laboratories.

The work performed in the satellite clinics is identical to the work performed in the outpatient clinic at Wyoming. That is, while clinic LPNs and CMAs perform throat cultures and nasal washing, draw blood, and gather specimens for urinalysis, lab employees collect pap smears, endometrial biopsies, mole removals, tissue biopsies and skin scrapings. Some simple tests may be run by lab employees at the satellite clinics or outpatient clinic. However, more complex tests are conducted at the second-floor main lab in Wyoming. At least half of the samples taken at the satellite or Wyoming outpatient labs require analysis by the Employer's second-floor main lab. Approximately 580,000 lab tests are performed in the main lab each year. About 75 percent of these 580,000 tests are generated by the clinics. The remainder are for inpatients or clients such as nursing homes. A courier employed by the Employer makes two stops a day at each satellite clinic to pick up specimens and delivers them to the second-floor main lab in Wyoming. Specimens from the outpatient lab are sent to the second-floor main lab by pneumatic tube.

Lab employees employed in Wyoming regularly cover for lab employees employed at the satellite clinics. In the 6-month period from June 1 to the date of the hearing, Wyoming lab employees filled in on 82 days due to planned absences by satellite lab employees. This statistic does not include days when Wyoming lab employees filled in for satellite lab employees due to unplanned absences. On the other hand, it is rare for a satellite lab employee to work at the Wyoming labs.

Satellite clinic LPNs and CMAs have daily contact with lab employees in the satellite locations, and Wyoming clinic LPNs and CMAs have daily contact with lab employees in the outpatient lab. Both sets of LPNs and CMAs have limited contact with lab employees on the second floor of the Wyoming facility. At times LPNs and CMAs call the employees in the second-floor lab with questions on how to store or collect specimens, or a second-floor lab employee calls them if a test reveals a critical “value” (result) on a patient.

Lori Ralph, whose title is technical supervisor and who reports to Huuki, supervises lab employees who work at the satellite clinic laboratories, including the Wyoming outpatient lab. While not entirely clear in the record, it appears that the employees in the second-floor main lab are not supervised by Lori Ralph.

OTHER TECHNICAL EMPLOYEES EMPLOYED BY THE EMPLOYER

Except for the sleep center, which is described in more detail below, the Employer employs a variety of additional employees it contends are technical.³ These

³ At no time during the hearing did Petitioner suggest that it disputed the technical status of any employees described in this section of the decision. However, in its post-hearing brief, Petitioner contends that coders and pharmacy techs are not technical employees. Because neither party made clear that the technical status of any employees was in dispute, the record is insufficient to decide this issue.

include massage therapist; 5 physical therapy assistants (regular and casual) employed in rehabilitation services; 14 pharmacy technicians and 1 pharmacy distribution specialist employed in the pharmacy; 14 coders who code each patient event requiring reimbursement; 11 surgical technicians who assist in surgery; 15 respiratory care practitioners (regular and casual) who provide inpatient and outpatient testing, treatments and education related to respiratory issues; 3 echocardiology techs who perform echocardiograms (ultrasound through the chest wall), stress echo tests, “bubble” studies, and “definity studies” (using contrast mediums to take an image of the whole heart), all related to the heart, who are not part of the diagnostic imaging department; 1 cardiopulmonary specialist, who tests lung capacity; 1 cardiology holterscan technician; 1 diatetic technician; and, finally, 11 hospital LPNs.

The record contains a great deal of information regarding the job functions and educational and licensure requirements for the classifications identified above (except hospital LPNs). In general, the employees in the classifications identified above are separately supervised when compared to the satellite clinic and Wyoming clinic employees, as well as when compared to the diagnostic imaging department and laboratory employees. While the employees in the job classifications identified above have some work-related contact with clinic employees, the record fails to establish that the contact is regular or daily. There is also some evidence that a few of the employees in the classifications identified above work at the satellite clinics on a regular basis, but there is little evidence suggesting that those who work at the satellite clinics have regular contact with employees in the unit sought by Petitioner. Finally, there is no evidence of interchange on a temporary or permanent basis. That is, there is no

evidence that employees in the unit sought by Petitioner ever perform the jobs in the classifications identified above, and no evidence that employees in the classifications identified above perform the jobs of the employees in the unit sought by Petitioner. Moreover, there is little evidence of permanent transfer of employees between the jobs in the unit sought by Petitioner and the classifications identified above.

The Sleep Center

The sleep center is located in Chisago City. It is apparently located in the same building as the satellite clinic, but it has a separate entrance. The record is inconsistent with regard to who manages the sleep center. Director of Rehabilitation, Sports and Orthopedic Services Bryan Gaffy testified that Jane Strew manages the sleep center and reports to Gaffy. However, an organizational chart in evidence states that Wendy Young manages the sleep center, as well as various Wyoming clinics.

Patients for the sleep center call either the sleep lab or the Chisago City satellite clinic to make an appointment. A CMA employed in the sleep center greets patients. Patients suffer from sleep disorders, and the sleep center performs evaluations and services for those patients. In 60 percent of the cases evaluated, the doctor orders tests that are conducted in Chisago City or at the outpatient laboratory in Wyoming. In 70 percent of the cases a sleep study is ordered, and the patient sleeps overnight at the sleep center and is monitored.

Five polysomnographic technicians work in or out of the sleep center. Three monitor patients during sleep studies; one scores tests during regular daytime hours; and one fits patients with devices to help with sleep disorders, as well as instructing

patients on the use of the devices and following up with patients on their success.

Scoring and fitting are performed at Chisago City.

The Employer contends that the five polysomnographic technicians are technical employees. All five participated in a 2-year educational program, and four of the five have been certified after taking an exam administered by the American Association of Sleep Technologists (the fifth is scheduled to take the exam). The Employer contends that it requires certification to become a polysomnographic technician.

In its post-hearing brief, Petitioner contends that because 70% of the sleep center patients spend the night in the clinic for sleep studies, therefore the sleep center is part of the hospital.

PAY, BENEFITS AND OTHER WORKING CONDITIONS

The record contains little evidence regarding the pay of employees in the unit sought by Petitioner, or regarding the pay of any other employees in dispute in this case. However, the record does establish that some technical employees who the Employer argues should be in the unit are paid more on an hourly basis than the CMAs Petitioner would include in the unit, and others are in the same pay range as those CMAs.

All of the employees in question have the same benefits; the same centralized human resources department that controls the posting of jobs, application and hiring procedures; and are subject to the same human resources policies.

BOARD LAW WITH REGARD TO HEALTH CARE UNITS

Contrary to the Employer's initial position set forth in its post-hearing brief, the Board has made clear that its health care rules do not apply to determinations of appropriate units in health care facilities that are not acute-care hospitals, including situations where the unit in question involved employees of a nursing home which is connected with an acute-care hospital. *The Child's Hospital*, 307 NLRB 90 (1992); *Park Manor Care Center*, 305 NLRB 872 (1991). Among health care facilities that therefore are not covered by the health care rules are medical clinics. *Faribault Clinic, Ltd.*, 308 NLRB 131 (1992).

Rather, the test to be applied in the instant case is set forth in *Park Manor Care Center*, supra. The *Park Manor* test for determining the appropriateness of bargaining units is an "empirical community of interest" test. Under that test, I am to consider community-of-interest factors, as well as those factors considered relevant by the Board in its rulemaking proceedings on collective-bargaining units in the health care industry, including evidence presented during rulemaking with respect to units in acute-care hospitals, and prior cases involving either the type of unit sought or the type of health care facility in dispute. Finally, if the employees excluded could not themselves constitute a separate unit, "they must perforce be included in the broader unit." *Hillhaven Convalescent Center*, 318 NLRB 1017 (1995).

In this case, unlike most reported Board cases that I have reviewed, Petitioner does not seek to represent all technical employees employed by the Employer. Rather, Petitioner seeks to represent part of the Employer's technical employees and contends

that the unit it seeks is appropriate, even taking into account the Board's health care rules and the test set forth in *Park Manor Care Center*.

In one recent case, applying the *Park Manor* test, in a 2-1 decision, the Board found inappropriate a unit limited to the employer's paramedics; rather, the Board concluded that the appropriate unit must include all of the employer's technical employees. *Virtua Health, Inc.*, 344 NLRB 604 (2005). In doing so, however, the Board did not conclude that because the paramedics were technical employees, they could never be an appropriate unit because other technical employees were excluded. Rather, the Board majority conducted a community-of-interest analysis, and considered application of the Board's health care rules. Among the factors cited by the majority in rejecting the union's request for a unit limited to paramedics were that the employer operated a comprehensive regional medical system, that the paramedics provided advanced patient care of the type provided by the employer's staff (including technical employees) in the emergency room, that the paramedics had specialized training or education like other technical employees employed by the employer, that the paramedics interacted with other technical employees on a regular basis and interchanged with them on occasion when they provided extra help in the emergency room, that there was evidence of temporary and permanent transfer, and that the work stations of the paramedics were geographically proximate to the employer's hospitals. Moreover, the Board majority noted that the factors relied on in rulemaking also supported a single technical unit, including the skill backgrounds of various technical employees and the placement of various types of technical employees together, even

though they worked in different areas and had no common supervision or interchange with other technical employees.

PETITIONER'S UNIT IS INAPPROPRIATE, AND THE APPROPRIATE UNIT MUST INCLUDE ALL TECHNICAL EMPLOYEES EMPLOYED BY THE EMPLOYER

Petitioner Seeks a "Fractured" Unit

To begin with, regardless of the health care rules, the unit sought by Petitioner violates one of the fundamental principles of Board law. That principle is that the Board will not approve fractured units; that is, combinations of employees that have no rational basis. *Seaboard Marine, Ltd.* 327 NLRB 556 (1999). In this matter, Petitioner has violated this principle in several ways.

First, and with its only explanation being that most of the patients spend a night in the clinic for their sleep studies, Petitioner excludes from the unit the employees employed in the sleep center located in Chisago City. Yet the sleep center is a specialty clinic akin to the Wyoming specialty clinics. Moreover, the sleep center appears to be the only clinic not located in Wyoming that Petitioner excludes from the unit. As a result, if I order an election in the unit sought by Petitioner, it appears that the CMA working in the sleep center would be the only CMA employed anywhere in the Employer's system not in the unit. Moreover, the polysomnographic technicians employed in Chisago City would be the only technical employees employed outside the Wyoming location not in the unit. While the sleep center is separately supervised,⁴ I note that each satellite clinic that Petitioner includes in the unit is separately supervised. Thus, separate supervision does not provide a rational basis for excluding the sleep

⁴ The evidence in this regard is unclear.

center employees from the unit. Thus, the sleep center is in a sense a satellite clinic like the satellite clinics in the unit sought by Petitioner (it is not located in the Wyoming facility); the sleep center is a specialty clinic like some of the Wyoming clinics in the unit sought by Petitioner; the sleep center employs a CMA like all of the clinics in the unit sought by Petitioner; and the sleep center employs other technical employees engaged in testing and analysis of test results, like some of the employees employed in the clinics in the unit sought by Petitioner. Thus, there appears to be no rational basis for excluding sleep center employees from the unit.

Second, and again without explanation, Petitioner has excluded from its unit the employee employed in the outpatient clinic located on the first floor in Wyoming. This clinic is located in the same area as the Wyoming clinics Petitioner includes in the unit. Moreover, the employee in this clinic performs exactly the same tasks as employees in the satellite clinics—drawing blood or gathering other specimens for analysis, and conducting some of the analysis. In this regard, witnesses who testified on behalf of Petitioner, most of whom have worked in both the satellite and Wyoming clinics during their careers, testified that the amount and type of contact they have with lab employees when working in the satellite clinics compared to the outpatient clinic when working in the Wyoming clinics, is exactly the same. In addition, the lab employees in the satellite clinics have the same immediate supervisor as the lab employee employed in the outpatient clinic. Thus, the employee of the outpatient clinic is the functional equivalent of the lab employees employed in the satellite clinics in the unit sought by Petitioner; the outpatient clinic is located in the same area as other Wyoming clinics in the unit sought by Petitioner; the outpatient clinic employs the same technical employee as employed in

the satellite clinics in the unit sought by Petitioner; and the outpatient clinic employee has the same supervisor as the lab employees employed in the satellite clinics included in the unit sought by Petitioner. Thus, there appears to be no rational basis for excluding Wyoming outpatient clinic employee.

Finally, the group of employees sought by Petitioner constitutes a fractured unit because Petitioner asks that I order an election where some—but not all—of the laboratory department employees would be in the unit, and where some—but not all—of the diagnostic imaging department employees would be included in the unit. While Petitioner’s argument is that it is seeking the laboratory and diagnostic imaging employees who are based in the satellite clinics, this argument ignores the fact that Petitioner is also seeking to represent clinic employees in Wyoming, while not seeking to represent the employees who are the functional equivalents of the lab and diagnostic imaging employees who are located in the satellite clinics, and who perform the exact same functions for the satellite clinics included in the unit. In addition, Petitioner’s argument ignores the fact that supervision of the laboratory department employees employed in the satellite clinics is not clinic-based. Rather, laboratory employees, whether employed in the satellite clinics or in Wyoming, constitute their own department with a supervisory hierarchy that is separate and distinct from the supervisory hierarchy for clinic CMAs and LPNs. The same analysis applies to the diagnostic imaging employees. The supervision of the diagnostic imaging employees employed in the satellite clinics is not clinic-based. Rather, diagnostic imaging employees, whether employed in the satellite clinics or in Wyoming, constitute their own department, with a supervisory hierarchy that is separate and distinct from the supervisory hierarchy for

clinic CMAs and LPNs. Thus, I decline to order an election in a unit where some employees in a department would be excluded from the unit while others would be included.

Other Technical Employees Share a Community of Interest with Employees in the Unit Sought by Petitioner

Applying the *Park Manor* test and conducting a community-of-interest analysis, including application of the Board's health care rules, leads me to conclude that the unit must include all of the Employer's technical employees. First, the Employer is a comprehensive regional medical system, and there is a high degree of functional integration. For example, the Employer conducts about 6,000 imaging procedures each month, and about 40 percent of those procedures originate from the clinics in the unit sought by Petitioner. With regard to the 40 percent originating in the clinics sought by Petitioner, about half of the imaging is performed in the clinics, and about half of the imaging is performed at the Wyoming facility by imaging department employees. Moreover, most of the imaging is analyzed at the Wyoming facility. Similarly, about 580,000 lab tests are performed in the Wyoming second-floor main lab each year. About 75 percent of those 580,000 tests are generated by the clinics sought by Petitioner. While less detail is provided in the record, similar functional integration exists with regard to cardiology, rehabilitation, physical therapy, surgery, the pharmacy, and other services provided by the Employer. That is, the services are provided to patients originating in the clinics sought by Petitioner.

Second, unit employees sought by Petitioner provide patient care similar to employees Petitioner would not include in the unit. In this regard, the CMA in the sleep

center (not included in Petitioner's unit) performs some of the same functions as the CMAs and LPNs in the satellite clinics. The employee in the Wyoming outpatient lab (not included in Petitioner's unit) performs exactly the same functions as lab employees employed in the satellite clinics. Similarly, employees in the diagnostic imaging department located in Wyoming (not included in Petitioner's unit) perform some of the same tests as diagnostic imaging employees located in the satellite clinics (and the Wyoming employees also perform more complicated tests). Finally, lab technicians located in Wyoming (not included in Petitioner's unit) perform some of the same tests as lab technicians in the satellite clinics (and the Wyoming employees also perform more complicated tests).

Third, there does not appear to be any distinction in the specialized training or education of unit employees compared to employees that Petitioner proposes to exclude from the unit. This is most obvious with regard to LPNs, diagnostic imaging department employees, and laboratory employees, where Petitioner would exclude some of each classification while including others. On the other hand, this distinction does exist with regard to other technical employees involved in rehabilitation, pharmacy, surgery, cardiology, physical therapy, respiratory care and other special services, where the record is clear that each classification of technical employees has specialized training and certification unique to each classification's specialty.

Less clear is the significance of the amount of daily interaction between employees in the unit sought by Petitioner with employees Petitioner would exclude. It does appear that proposed unit employees employed as diagnostic imaging technicians in the satellite clinics have daily interaction with Wyoming diagnostic imaging

employees. Moreover, Wyoming LPNs and CMAs, whom Petitioner would include in the unit, appear to have daily contact with employees in the outpatient clinic (whom Petitioner would exclude from the unit), to the same degree and of the same type as exists between LPNs/ CMAs and the lab employees located in the satellite clinics.

Unlike *Virtua Health*, cited above, there is substantial evidence of interchange and common supervision. First, with regard to interchange, it is fair to conclude that nearly all of the interchange goes in one direction. That is, employees from Wyoming whom Petitioner would exclude from the unit regularly substitute for employees in the satellite clinics, whom Petitioner would include in the unit. On the other hand, employees from the satellite clinics rarely substitute for Wyoming employees. Specifically, laboratory department employees from Wyoming regularly substitute for laboratory department employees located in the satellite clinics, and diagnostic imaging employees from Wyoming regularly substitute for diagnostic imaging employees located in the satellite clinics.

With regard to supervision, it is clear that the LPNs and CMAs sought by Petitioner are separately supervised from other technical employees. However, this separate supervision is less important because each clinic of LPNs and CMAs included in Petitioner's unit is separately supervised. On the other hand, the lab tech employees sought by Petitioner have common supervision with all lab tech employees located in Wyoming, whom Petitioner would not include in the unit. Similarly, the diagnostic imaging employees sought by Petitioner have common supervision with the diagnostic imaging employees in Wyoming, whom Petitioner would not include in the unit.

Finally, I note that all technical employees enjoy the same benefits, are subject to the same human resources rules and procedures, and are otherwise not differentiated from one another by any Employer policies. Thus, I conclude that the factors relied on in rulemaking support a single unit of certified medical assistants, licensed practical nurses and other technical employees, applying a community-of-interest analysis.⁵

I have also carefully considered the two cases cited by Petitioner in support of its argument that clinic-based employees can constitute an appropriate unit.⁶ While both cases pre-date the Board's *Park Manor* decision, more importantly, both cases are factually distinguishable. In both cases the Board approved clinic-based units of registered nurses excluding hospital-based registered nurses, where there was separate supervision, little evidence of interchange or daily contact, and differences in skills and duties. None of those facts is present in this case, particularly with regard to diagnostic imaging and laboratory employees employed in the clinics.

6. The following employees of the Employer constitute a unit appropriate⁷ for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

⁵ The Employer also argues that the fact that its two existing units are region-wide supports the broader unit. Petitioner argues that the fact that two to three other Fairview regional health care systems have units limited to technical employees employed in the regions' clinics supports its unit. Neither argument is particularly compelling, as in both cases the units were voluntarily agreed upon and appear to have been based on historical contexts not present here. However, the existence of two region-wide units at the Employer certainly supports my conclusion that the technical employee unit must also be region-wide.

⁶ *Kaiser Foundation Hosps.*, 219 NLRB 168 (1975); and *S. California Permanente Group*, 209 NLRB 106 (1974).

⁷ Although the unit found appropriate herein is broader in scope than that sought by Petitioner, Petitioner indicated a willingness to go to an election in the broader unit. Therefore, I shall direct an election in the appropriate unit conditioned upon the demonstration by Petitioner within fourteen (14) days from the issuance of this Decision that Petitioner has an adequate showing of interest in the broader unit. In the event Petitioner does not wish to participate in the election in the unit found appropriate herein, I shall permit it to withdraw without prejudice upon notice to the undersigned within fourteen (14) days from the date of issuance of this Decision, or if applicable, from the date the Board denies any request for review

All full-time and regular part-time certified medical assistants, licensed practical nurses and other technical employees employed by the Employer at its Wyoming, Minnesota hospital and clinics and at its sleep center and satellite clinics; excluding business office clericals, service and maintenance employees, human resources department employees, registered nurses, professional employees, skilled maintenance employees, confidential employees, guards and supervisors as defined in the Act, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been

of the unit-scope findings in this Decision. *Independent Linen Service Company of Mississippi*, 122 NLRB 1005 (1959).

discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁸

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Service Employees International Union (SEIU) Healthcare Minnesota.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by January 19,

⁸ In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 18 within seven (7) days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 330 South 2nd Avenue, Suite 790, Minneapolis, Minnesota 55401, on or before **January 12, 2010**. No extension of time to file this list shall be granted nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

2010. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁹ but may not be filed by facsimile.

Signed at Minneapolis, Minnesota, this 5th day of January, 2010.

Marlin O. Osthus, Regional Director
Eighteenth Region
National Labor Relations Board

⁹ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.